


OVERLAP: BAIL, VCRS, AND REPEAT OFFENSES

CONTEXT



REPEAT OFFENSES / BAIL / VCRs: TIMELINESS OF RESPONSE PROMOTES ACCOUNTABILITY

Repeat Offenses

Draft for discussion purposes

As of 12/10/23 there were 3,485 people with 12,688 pending dockets. As of 12/10/23 there was 21,619 pending criminal cases. As such, 58.68% of all pending criminal cases were alleged *repeat offenders* (two or more pending criminal dockets).

- 8 people with 25 or more open dockets, representing 297 pending dockets.
- 20 people with 20 or more open dockets, representing 558 pending dockets.
- 59 people with 15 or more open dockets, representing 1,198 pending dockets.
- 157 people with 10 or more open dockets, representing 2,287 pending dockets.
- **689 people with 5 or more open dockets, representing 5,587 pending dockets.**

(Data Source, Vermont Judiciary 12/10/23)

Row Labels	Addison Unit	Bennington Unit	Caledonia Unit	Chittenden Unit	Essex Unit	Franklin Unit	Grand Isle Unit	Lamoille Unit	Orange Unit	Orleans Unit	Rutland Unit	Washington Unit	Windham Unit	Windsor Unit	Grand Total
Count of Defendants	136	341	339	740	71	399	40	201	147	372	454	376	374	278	
															Grand To
															Count
															12,688
															3,485

NOTE: data in chart above represents defendants *with two or more* pending dockets. Note a docket may include multiple counts. As noted above, the 3,485 people with 12,688 pending dockets are those defendants with *two or more* pending dockets. Meaning of the 21,619 pending criminal dockets – 12,688 relate to 3,485 persons. As such, nearly 60% of pending cases are persons alleged to have committed repeated criminal conduct.

NOTE: data in chart below is snapshot of top 20 persons with multiple pending dockets (pending dockets are in the column on the right and represent a total of 558 dockets amongst 20 persons).

B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
Addison Unit	Bennington Unit	Caledonia Unit	Chittenden Unit	Essex Unit	Franklin Unit	Grand Isle Unit	Lamoille Unit	Orange Unit	Orleans Unit	Rutland Unit	Washington Unit	Windham Unit	Windsor Unit	Grand Total
														74
	47													47
				41										41
		7	9								13			29
1											27			28
4	1										22			27
													26	26
			25											25
													24	24
												24		24
				22						23				23
		7							15					22
											22			22
21														21
			21											21
		21							1			20		21
														21
												20		20
		20												20
														20

Broader Data Context: Of the 21,619 pending criminal cases (as of 12/10/23):

- **Misdemeanors: 14,772** (note VT is one of the only states where the misdemeanor cut-off is the 2-year penalty, most states have the 1-year cut-off).
- **Felonies: 6,748** (83 pending murder cases, including attempt).
- **Retail theft: 1,596** pending “retail” dockets. See below for all the pending dockets that include “retail” in the literal charge. Note, as with any filed information, a docket may have multiple counts, meaning that there may be many more counts of retail theft (e.g., you could have a 5-count information with 5 counts of retail theft in a single docket/case). Likely most retail theft cases are charged as a misdemeanor.
- **Failure to Appear Arrest Warrants (FTA Awws): 5,023** (1/1/23-12/29/23).

	Addison	Bennington	Caledonia	Chittenden	Essex	Franklin	Grand Isle	Lamoille	Orange	Orleans	Rutland	Washington	Windham	Windsor	Grand Total
Grand Total Retail Theft Dockets	35	69	41	608	4	117	1	59	12	98	270	144	94	44	1,596
Docket total as % of Statewide total 2020	2.19%	4.32%	2.57%	38.10%	0.25%	7.33%	0.06%	3.70%	0.75%	6.14%	16.92%	9.02%	5.89%	2.76%	100%
Census population	37,363	37,347	30,233	168,323	5,920	49,946	7,293	25,945	29,277	27,393	60,572	59,807	45,905	57,753	643,077
Population as % of State population	5.81%	5.81%	4.70%	26.17%	0.92%	7.77%	1.13%	4.03%	4.55%	4.26%	9.42%	9.30%	7.14%	8.98%	100%
Difference between % of RT dockets and % of population	-3.62%	-1.48%	-2.13%	11.92%	-0.67%	-0.44%	-1.07%	-0.34%	-3.80%	1.88%	7.50%	-0.28%	-1.25%	-6.22%	0%

SAS attorneys continue to heavily utilize restorative justice and court diversion. In 2023:

- 1,531 Adult Diversion Referrals and 357 Tamarack Referrals Occurred in the Criminal Division (20% of all new Misd Charges);
- 244 Delinquencies were sent to Diversion (35% of delinquency filings were to sent to diversion);
- 87 YO cases were sent to Diversion (28% of YO filings were sent to diversion).
- Countless hundreds of cases are declined and deflected each year by SAS attorneys and also referred to pre-charge programming.

FTAs (Failure to Appear)

➤ From 1/1/23 to 12/29/23 – there were **5023 FTA ARREST WARRANTS (AW)**.

✓ Note: Sometimes Judges may not issue a FTA warrant even when someone fails to appear (e.g., a Judge may wish reschedule the person for another arraignment date or provides defense attorney further time to locate client). Or a Judge will intend to issue a FTA AW but then the defendant eventually appears prior to COB and the warrant never issues (sometimes a person who FTAs may become aware of the potential for an AW and in response appear in court after hearing time. Or def appears after learning that they had missed the appearance by other means and as such FTA AW is never issued).

SAS NOTES CONCERNING BAIL

- Concerning bail, there is a range of views on the current use and future of cash bail within Vermont’s criminal justice system.¹
- While the opinions amongst individual State’s Attorneys may vary, the Executive Committee of State’s Attorneys and the Office of the Executive Director of the Department of State’s Attorneys and Sheriffs does not support removal of cash bail.²
- We hear over and over from the public that it’s the “revolving door” of the courthouse. There is often confusion among community members concerning how and what bail is really for. It is not unusual (especially lately) to have a defendant rack up 10+ charges with many VCRS and “failures to appear” in court. We have seen an increase in cycles of noncompliance when defendants repeatedly violate conditions, FTA, commit new crimes, are arrested on a warrant, and are then released again on conditions with no bail.
- It is important to remember that while the prosecutor may request bail, it is the Court that imposes bail—and Courts may impose bail, or conditions, even without a request from the State. Cash bail remains a needed judicial tool to mitigate risk of flight from prosecution in those circumstances where conditions of release are unable to mitigate risk of flight.
- The risk of flight from prosecution analysis is especially important in the midst of the details of each case (*including certain misdemeanors, e.g. domestic assault, repeated VCRS and VCRS attached to serious conduct [curfew, driving with multiple pending DUIs and prior convictions, contact with victims, violation of responsible adult conditions], violation of abuse prevention orders, or reckless endangerment, amongst others*) where the consequences of a conviction, or many pending dockets, may increase the motivation of a person to avoid accountability and the court process.
- The Department of State’s Attorneys and Sheriffs appreciates efforts to ensure cases wherein an individual is held are promptly adjudicated and sufficiently prioritized within the judicial system.

¹ See link here: 2023 [Vermont Sentencing Commission Report on Whether to Eliminate Cash Bail](#).

² See link here: 2023 [Source: 2023 SAS Testimony on S.27](#). Further, Executive Committee of State’s Attorneys and the Office of the Executive Director of the Department of State’s Attorneys and Sheriffs believes that the Vermont Constitution would need to be amended to remove cash bail.



Department of
State's Attorneys
and Sheriffs

REPEAT OFFENSES / BAIL / VCRs: *TIMELINESS OF RESPONSE PROMOTES ACCOUNTABILITY*

Draft for
discussion
purposes

- **Conditions (CORs) imposed by a Court should matter** - CORs are conditions imposed by a Judge that allow for a defendant to be released prior to trial in the community - in lieu of imposition of cash bail, conditions of release are supposed to reasonably mitigate risk of flight **AND** reasonably protect the public. NOTE: bail *may not* be used to ensure protection of the public.
 - ✓ If conditions "of release" are violated or there are multiple pending cases for a single person, what is the appropriate response?
- **Closing the gap in time between date of offense and date of consequences** will also decrease repeat-offense, misdemeanor, first-time offenders, and VCR accountability, particularly, for lower-level community criminal conduct.
- **Immediacy is an essential ingredient** as well as **certainty of a date where consequences could occur.**

4

- **To discourage repeat offenses and VCRs = decrease the amount of time between offense-date and accountability-date (between arrest and consequence).**
- **It is better for the Defendant, Victim, and Community to reduce time period between arrest-date and date of potential consequences.** For lower-level crime: **date of arrest is too far removed from final disposition...**
- **On the rise: "lower-level" community crime** (e.g., VCRs: Simple Assault, Driving-related conduct, Dis.Conduct, VAPOs, Interference w/Access to Emergency Services, Petit Larceny, Retail Theft, Unlawful Mischief, Unlawful Trespass, etc. in Vermont. Even amongst "lower-level" offenses, we are seeing an increase in violent-conduct and gun-related incidents).
- **Not unusual for defendants with 10-15 pending dockets** (increase in cycles of noncompliance w/repeated VCRs).



Department of
State's Attorneys
and Sheriffs

Draft for
discussion
purposes

LEGISLATIVE SOLUTIONS

BAIL And VCR Overlap: *Timeliness Of Response Promotes Accountability.*

- **VCRs / Noncompliance with Court Orders** should be viewed as essential factors in the “Risk of Flight from Prosecution” Bail Analysis. In practice there is a reliance on FTAs (*failures to appear*) for misdemeanors in the bail analysis. Even with many FTAs, we are seeing those alleged to have committed repeat offenses released without imposition of bail or consideration of new VCR arrests or repeat offense arrests.

SOLUTIONS

- ✓ **AMEND 13 V. 7554(a)(1)** to ensure that **VCRs, Noncompliance with Court Orders, FTAs, and Supervision Status** should be accounted for as essential factors in the 13 V. 7554 analysis of **Risk of Flight from Prosecution**.
- ✓ **AMEND the 13 V. 7576(9)** definition of “Flight from Prosecution” to emphasize the policy aim and community expectation that **Noncompliance with Court Orders and Failures to Appear at Court** should be considered evidence of “**RISK**” of Flight from Prosecution” and should be considered as essential factors in the court’s analysis when deciding whether to impose bail or impose elevated conditions of release. “Flight from prosecution” means any action or behavior undertaken by a person charged with a criminal offense to avoid court proceedings...
- ✓ **AMEND 13 V. 7551(b)** so that the \$200 cap shall not apply to an offense committed by a defendant who has been released pending trial for another offense.
- ✓ **Stricter timelines for those with VCRs and expanded court time for those held on misdemeanor bail, or on elevated conditions of release (#4, curfew, etc.)** (complexities abound: MH, Substance Use, Housing, Generational Poverty, DV/SV violence, etc.). Some states have night court and OT court to address community-level crime disposition.
- ✓ **VCRs.** The State may pursue criminal contempt for VCRs and may file criminal charges for VCRs - but what other tools could be pursued to expedite VCR-related cases and increase accountability for lack of compliance with COR and repeat-offense cases? Should there be enhanced expedited pathway for Civil Contempt relating to elevated-conditions VCRs?

5

NOTE ON POTENTIAL SOLUTIONS: The Executive Committee of State’s Attorneys and the Office of the Executive Director of the Department of State’s Attorneys and Sheriffs submitted suggested changes to the bail statute in November 2023 to both the House Committee on Judiciary and Senate Committee on Judiciary (see *end of this document*). [See also H.581](#), introduced Jan. 2024, which includes some of the changes suggested by SAS.

[Source: Rep. Lalonde, Pres. 12.19.23](#)

Roles of the Criminal Justice System

- Retribution, rehabilitation, incapacitation, and deterrence
- Deterrence: Probability and Severity of Consequences
- Many studies find that the probability of consequences deters more than the severity of punishment.
- Probability of Consequences
 - Chances of Being Caught
 - Certainty and Expediency of Consequences
- [Rubb, T., Meta Analysis of Crime and Deterrence: A Comprehensive Review of Literature \(2008\)](#)

- **Should Vermont provide for expedited VCR enforcement scheme whereby VCR-related cases take priority?**
- Should those convicted of a VCR or certain repeat offenses no longer be eligible for midpoint review or other consequences?
- **If one of the goals of criminal justice system is public safety**, we have seen in practice that the longer the timeframe from offense to consequences, for lower-level crimes (VCRs, dc, pl, um, etc.), that there is an increase in chances/opportunities to re-offend. Lack of timeliness sends a message that criminal conduct is not going to be met with a response, particularly, if while awaiting trial, multiple VCRs and/or FTAs occur with no detention or imposition of bail to mitigate “risk” of flight from prosecution.

BAIL/VCRS: COMMUNITY EXPECTATIONS V. REALITY

Draft for discussion purposes

- **“HOLD WITHOUT BAIL.”** Defs can only be held without bail for certain crimes of violence (13 V. 7553a) & life offenses (13 V. 7553) – very limited circumstances.
- **IMPOSITION OF BAIL.** Cash bail is a tool utilized by Judges, in Vermont, only to secure appearances / AND per our bail statute, “mitigate the risk of flight from prosecution.” 13 V. 7554(a)(1).
 - **13 V. 7554(a)(1). COURTS CONSIDER** . . . the following factors when imposing bail and mitigating risk of flight from prosecution: {13 V. 7554(a) + Caselaw}: “in addition to any other factors...” the seriousness, number of offenses, the nature and circumstances of the offense charged etc. amongst others. State v. Pratt (2017). Often prior failures to appear (FTAs) are heavily relied upon in the bail analysis.
 - **THE CURRENT DEFINITION OF 13 V. 7576 (9)** . . . does not expressly include contemplation of VCRs but “flight from prosecution” means any action or behavior undertaken by a person charged with a criminal offense to avoid court proceedings.”
- **NOTES AND QUESTIONS:**
 - **Bail.** What is missing in the 7576 and 7554 analysis? Express mention of VCRs? What can be done to ensure efficient and expedient prosecution to close gap between offense date and consequences?
 - **VCRs.** The State may pursue criminal contempt for VCRs / may file criminal charges for VCRS but what other tools could be pursued to expedite VCR-related cases and increase accountability for lack of compliance with VCR-related cases? Enhanced expedited pathway for Civil Contempt for elevated-conditions VCRs?
 - Many reference 13 V. 7575 “revocation” for VCRs etc. but 7575 is seldom requested given the high bar set by caselaw, amongst other reasons. If this statute is to have meaning, what can be done to improve its ability to be used in practice?

DOC DETAINEE SNAPSHOT DATA

Facility Where Held	<1000	1Ks	10Ks	100Ks	HWOB	ADULT	Drug Court Sanction - Serve	N/A / Release to Responsible	Other	UNKNOWN	Grand Total
CRCF	2	10	11	2	16	3	0	0	0	1	45
MVRCF	2	5	8	1	41	0	1	0	0	5	63
NECC	2	9	9	0	21	0	0	0	0	2	43
NSCF	4	13	13	3	47	3	0	0	0	4	87
NWSCF	1	8	2	3	36	4	0	1	1	2	58
SSCF	6	18	12	3	60	0	0	0	0	4	103
Grand Total	17	63	55	12	221	10	1	1	1	18	399

- The chart above reflects DOC “Current Detainees” as of 1/3/2024 at 8:48am. 17 people were detained on less than \$1,000 bail. These may entail misdemeanor or felony offenses. 221 were held on HWOB (“held without bail,” which is limited to serious felony offenses, and only maintained after an evidentiary hearing.).
- DOC would like to stress that this is only a snapshot³ of who at an exact point in time was detained in Vermont correctional facilities with a corresponding bail amount (or held without bail/with stipulations). This means the individuals incarcerated with a bail amount in this table have not yet paid their bail as of 8:48am on 1/3/2024 (but very well might etc.). Other prior snapshot data is provided below from September 2023 and February 2023.

Facility Where Held	<1000	1Ks	10Ks	100Ks	HWOB	ADULT	Cash or Bond	Other	Other / Release to Responsible	UNKNOWN	Grand Total
CRCF	3	9	13	2	11	1	1	0	0	3	43
MVRCF	3	5	11	1	46	0	0	0	0	6	72
NECC	8	10	11	1	27	1	0	0	0	3	61
NSCF	3	15	14	3	50	10	0	0	0	3	98
NWSCF	4	16	6	1	41	5	0	1	1	4	79
SSCF	4	18	10	4	54	2	0	0	0	9	101
Grand Total	25	73	65	12	229	19	1	1	1	28	454

³ The data available does not delineate between **when** bail was imposed during the course of a case – whether imposed at arraignment or subsequently, and does not capture circumstances where bail was posted and then a higher bail amount was set based on non-appearance or where bail was set and then posted and the person was released outside the time period captured by the snapshot.

Facility Where Held	0	<1000	1Ks	10Ks	100Ks	HWOB	Grand Total
CRCF	3	3	7	12	6	13	44
MVRCF	2	2	8	11	1	39	63
NECC	11	3	6	8	1	24	53
NSCF	9	5	14	18	5	63	114
NWSCF	6	1	15	11	2	34	69
SSCF	5	5	13	19		60	102
Grand Total	36	19	63	79	15	233	445

(Data Source: DOC snapshot from 2/14/23 was presented to SJC in February 2023 during the course of [S.27 testimony from SAS](#)).

- The table above, from February 2023: 176 of 445 individuals from this data set were held for lack of bail. 233 are noted as held without bail (which is limited to serious felony offenses, and only maintained after an evidentiary hearing). The other 36 individuals held with 0 bail are attributable to lack of a responsible adult or other circumstances not involving setting of cash bail by a court. In summary, there was a total of 3 women and 16 men on bail in amounts less than \$1,000 as of February 14, 2023. These may entail misdemeanor or felony offenses.

Background Information

What type of offenses are resulting in imposition of cash bail?

Recent data from the Department of Corrections indicates that 34 of 428, or 8% of those detained are detained based on a misdemeanor offense. Of this group, three-quarters of the individuals are detained based upon commission of crimes against a person (e.g. domestic assault, simple assault, etc.):

Page 4 of 7

**VT Department of Corrections:
Population Report 12/31/2022 ***

Crime Type	Detained	Hold	Sentenced	Total
01Fel/Serious	284		535	819
02Fel/Person	26	1	82	109
03Fel/Property	43		119	162
04Fel/Drug	21	1	30	52
05Fel/MotorV	8		27	35
06Fel/Other	12		16	28
07Misd./Person	23		33	56
08Misd./Property	2		1	3
09Misd./Drug	1		1	2
10Misd./MotorV	3	1	7	11
11Misd./Other	5			5
Uncategorized		72		72
Total	428	75	851	1354

1244 VT in-state population
110 VT out-of-state population
1354 Total VT incarcerated population

Crime Type Examples:
 01Fel/Serious: Aggravated Assault, Aggravated Sexual Assault, Murder
 02Fel/Person: Assault and Robbery, Lewd and Lascivious
 03Fel/Property: Burglary Occupied, Grand Larceny Arson
 04Fel/Drug: Dealing, Trafficking, Possession and Sale
 05Fel/MotorV: DUI3 or more
 06Fel/Other: Obstruction of Justice, Fugitive
 07Misd./Person: Domestic Assault, Simple Assault
 08Misd./Property: Unlawful Trespass, Retail Theft
 09Misd./Drug: Possession of drugs
 10Misd./MotorV: Careless and Negligent Operation
 11Misd./Other: Violations Conditions of Release

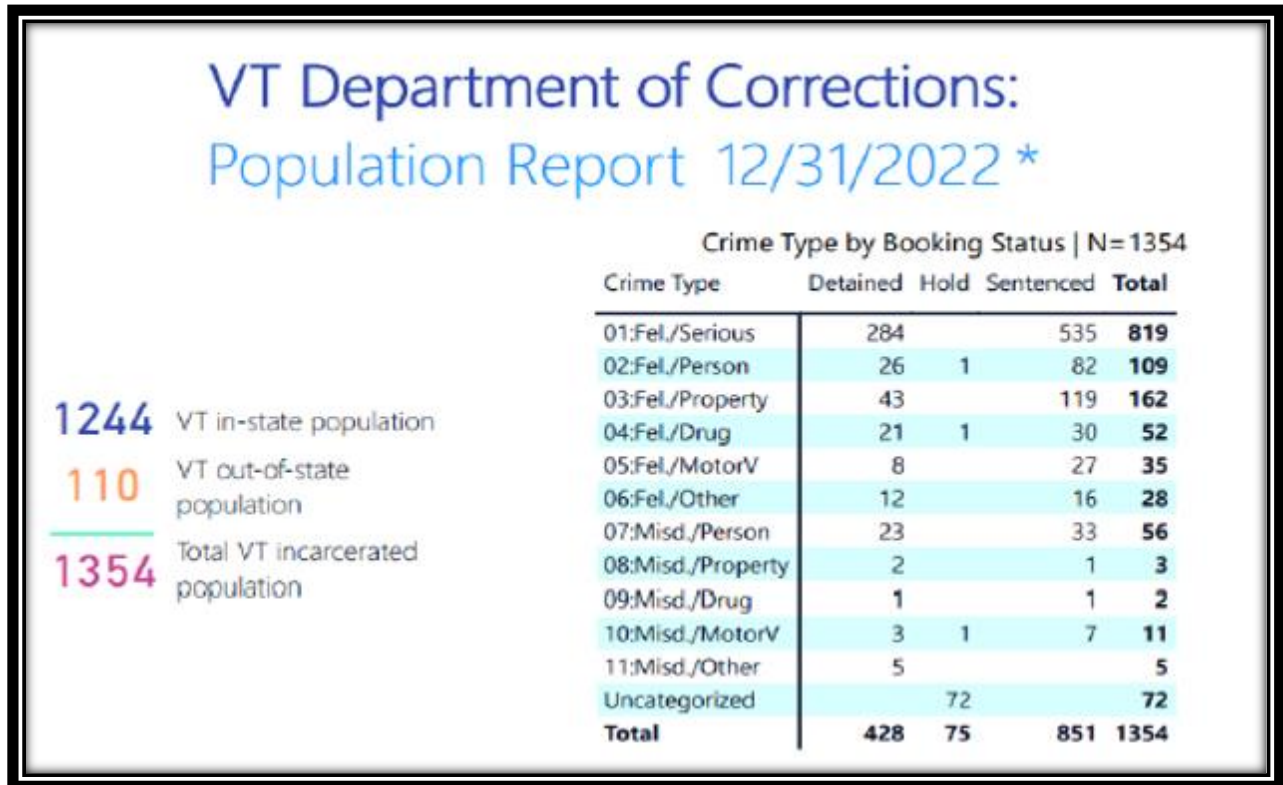
Note: All Uncategorized Crime Types have a Hold Status
 *Note: Daily Counts are accurate as of 10pm on the date listed

The data available does not delineate between when bail was imposed during the course of a case –whether imposed at arraignment or subsequently – and does not capture circumstances where bail was posted and then a higher bail amount was set based on non-appearance.²

In any event, the data demonstrates that the majority of individuals detained are not just felony cases, but they are serious crimes of violence (more than 300 of the 428 detained individuals).

(Source: 2023 SAS Testimony on S.27)

- The December 31, 2022, DOC snapshot (above and below) indicates that 34 individuals were held on misdemeanors, which constituted 0.3% of the total number – signifying a very small percentage of total cases, even if the total number for the year is greater versus that moment in time.
- The number of those detained almost certainly changes daily – as multiple individuals are apprehended on warrants each day and may be held overnight or count toward the population and be released the next day. Others will post bail after a period of time or resolve their cases.



(Source: 2023 SAS Testimony on S.27)

CASH BAIL, SELECTED SAS FIELD NOTES

- The “heat of the moment” after a domestic dispute (which are overwhelmingly misdemeanor cases) judges may conclude that the person is a flight risk given that they’re removed from their home and their closest personal relationship is disrupted.
- In practice, bail is requested more sparingly in misdemeanor cases, and judges frequently do not impose or maintain bail even if requested. This includes situations where a person has repeatedly refused to come to court proceedings, including for arraignment, jury trials, jury draws, change of plea events, motion hearings, and status conferences etc. When individuals do not appear it grinds the system to a halt and impairs a delicate and already painfully slow process.
- Bail can motivate individuals and counsel to be creative in mitigating risk of flight, for example, applying to residential treatment or engaging in services they previously declined. Some judges strike bail to allow attendance at Valley Vista or because they secure a new residence/housing. Judges respond favorably to changes in circumstance and usually want to strike bail or get the parties to discuss resolution of the case. In most misdemeanor cases where bail has been requested by arrest warrant, once the person appears, the bail is again struck.
- State’s Attorneys frequently have out-of-state defendants charged with serious offenses, and if Courts do not have a way to assure their appearance then they can just stay out of Vermont and never face responsibility. Bail is a tool in the judicial toolbox and the less tools we have, the less effective we are at our jobs.
- We hear over and over from the public that it’s the “revolving door” of the courthouse. There is often confusion among community members concerning how and what bail is really for. It is not unusual (especially lately) to have a defendant rack up 10+ charges with many VCRS and “failures to appear” in court.
- We have seen an increase in cycles of noncompliance when defendants repeatedly violate conditions, FTA, commit new crimes, are arrested on a warrant, and are then released again on conditions with no bail.

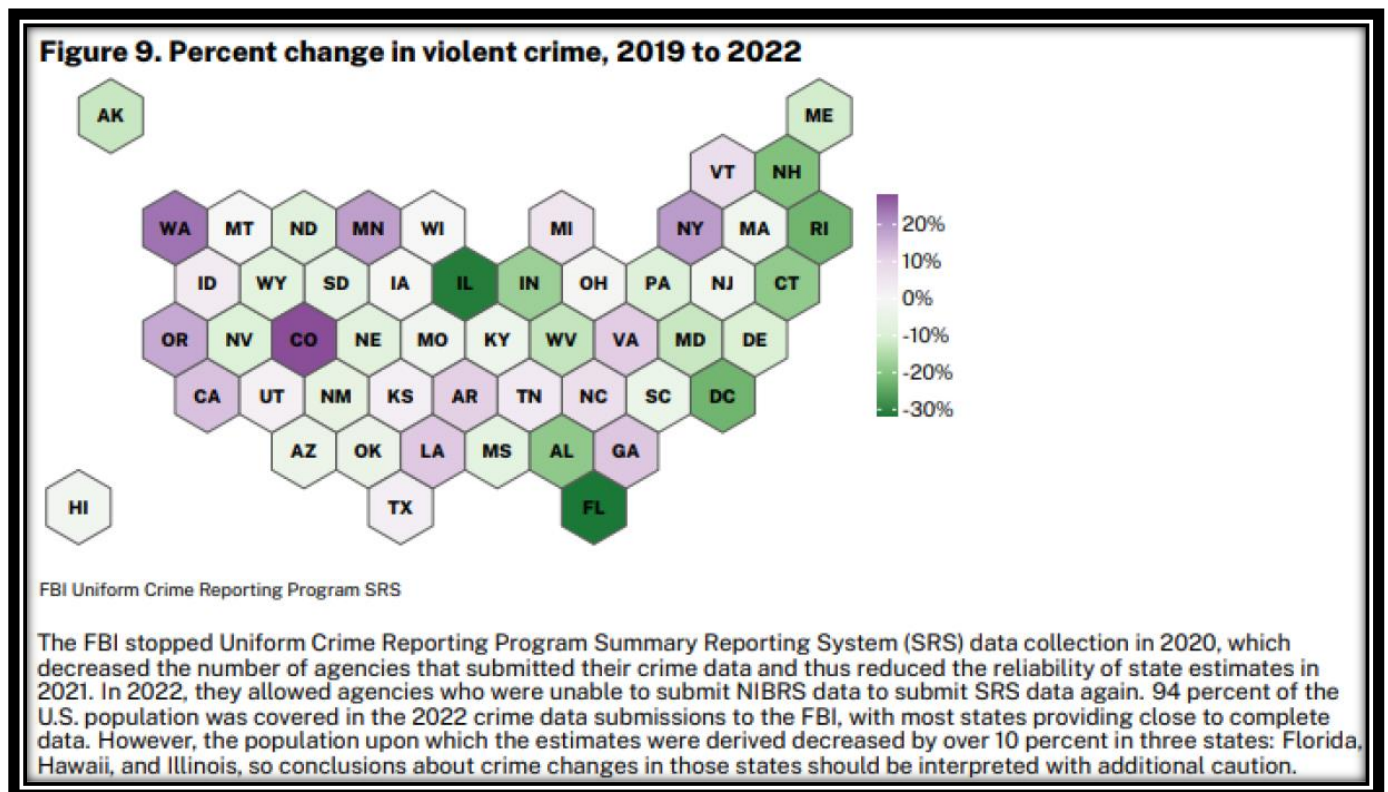
EVENTS/PROCEEDINGS WHERE CASH BAIL MAY BE IMPOSED IN VERMONT⁴

- Arrest without warrant – VRCrP 3(k) & 5(b), 13 VSA § 7551(b), 13 VSA § 7559(b);
- Issuance of an arrest warrant upon application by a prosecutor – VRCrP 4, 13 VSA § 7551(b);
- At initial appearance (and arraignment) – VRCrP 46(a), 13 VSA § 7551(b), 13 VSA § 7554;
- Upon failure to appear and issuance of a warrant - 13 VSA § 7551(b), 13 VSA § 7560a(a)(1);
- After conviction and before sentencing – VRCrP 46(c), 13 VSA § 7574;
- Probation violations – 28 VSA § 301(4)&(5);
- Fugitives – 13 VSA § 4955-57; and,
- Detention on a material witness warrant – 13 VSA § 6605.

⁴ Source: Vermont Sentencing Commission, 2023.

VERMONT CRIME DATA

- Per Rep. Martin LaLonde's December 19, 2023⁵ presentation to the House Committee on Appropriations and the Governor's State of the State on January 4, 2024, upon a review of FBI Data (current through 2022) presented by CSG, **crime is on the rise in Vermont.**
- SAS is currently prosecuting over 80 murder/attempted murder cases in Vermont courts. Murder and attempted murder cases have been filed and are pending in every county except Essex and Grand Isle. The complexity and seriousness of pending crimes in Vermont courts as well as the ongoing investigations relating to unsolved cases and cases yet to be charged are stretching SAS resources thin. As of 12/10/23, there were 211 pending cases under the following offense types: all forms of murder and attempted murder, including 1st, 2nd; manslaughter and attempts, death resulting, and agg assaults.
- SAS is responding to multiple points of community crisis: a housing emergency leaving many people unhoused; community level crimes against property, businesses, cars, and persons; drug-related crime; increasing crime amongst younger offenders; domestic violence; child abuse; sexual assault; an overdose/opioid epidemic; increasing gun violence; and repeat offenders who fail to abide by court orders. Both low-level and serious crime are on the rise, and it is taking too long for cases to reach final disposition.

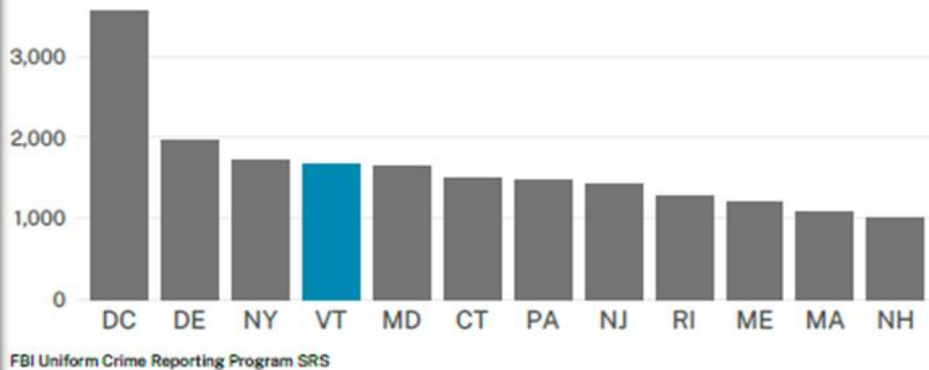


⁵ See weblink here: [Appropriations Public Safety Presentation](#) (Rep. Martin LaLonde, 12/19/23).

There were 10,813 property index crime incidents reported to police in Vermont in 2022.

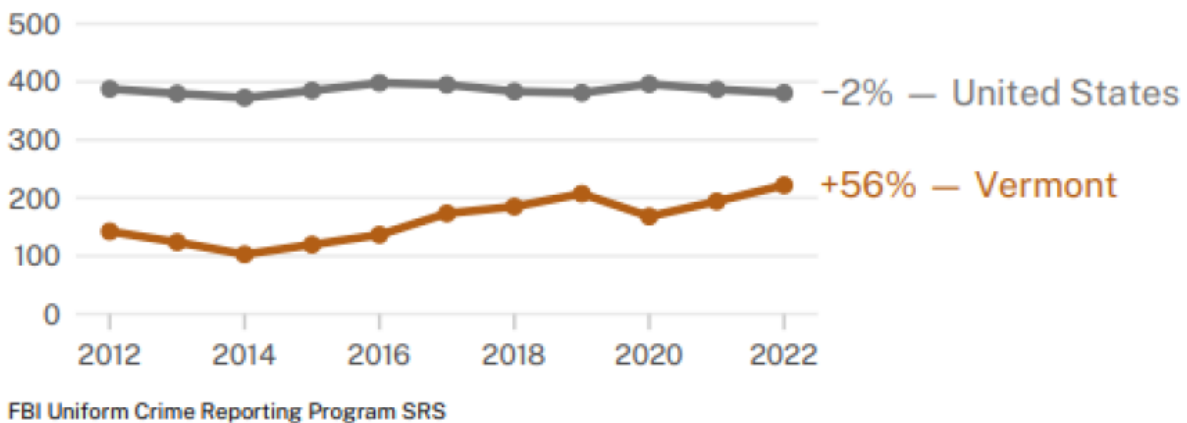
Vermont had the 4th-highest property crime rate in the region and the 18th-lowest property crime rate in the country.

Figure 11. Property index crime reported to police
Rate per 100k residents, Eastern Region, 2022



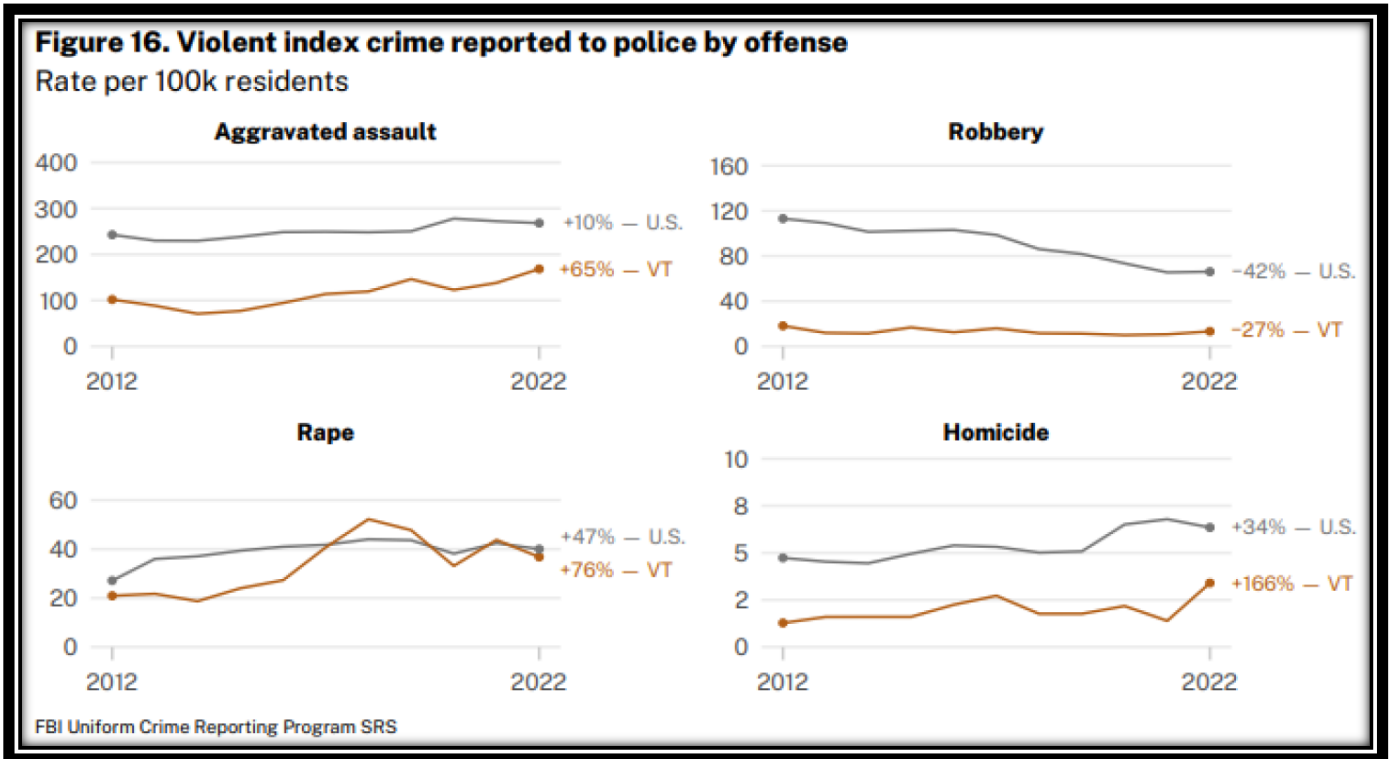
Source. Rep. LaLonde 12/19/2023 Presentation to House Appropriations Committee.⁶

Figure 15. Violent index crime reported to police
Rate per 100k residents

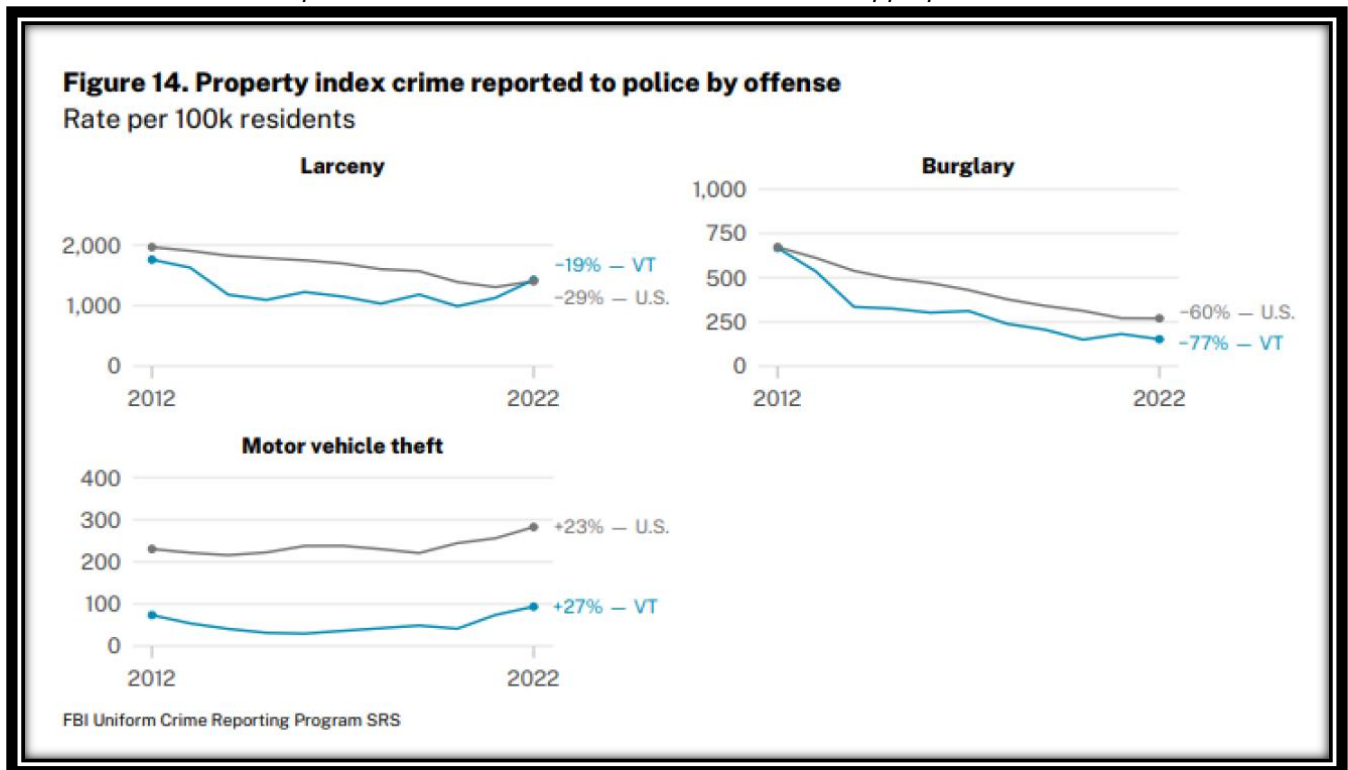


⁶W~Martin LaLonde~Appropriations Public Safety Presentation~12-19-2023.pdf.

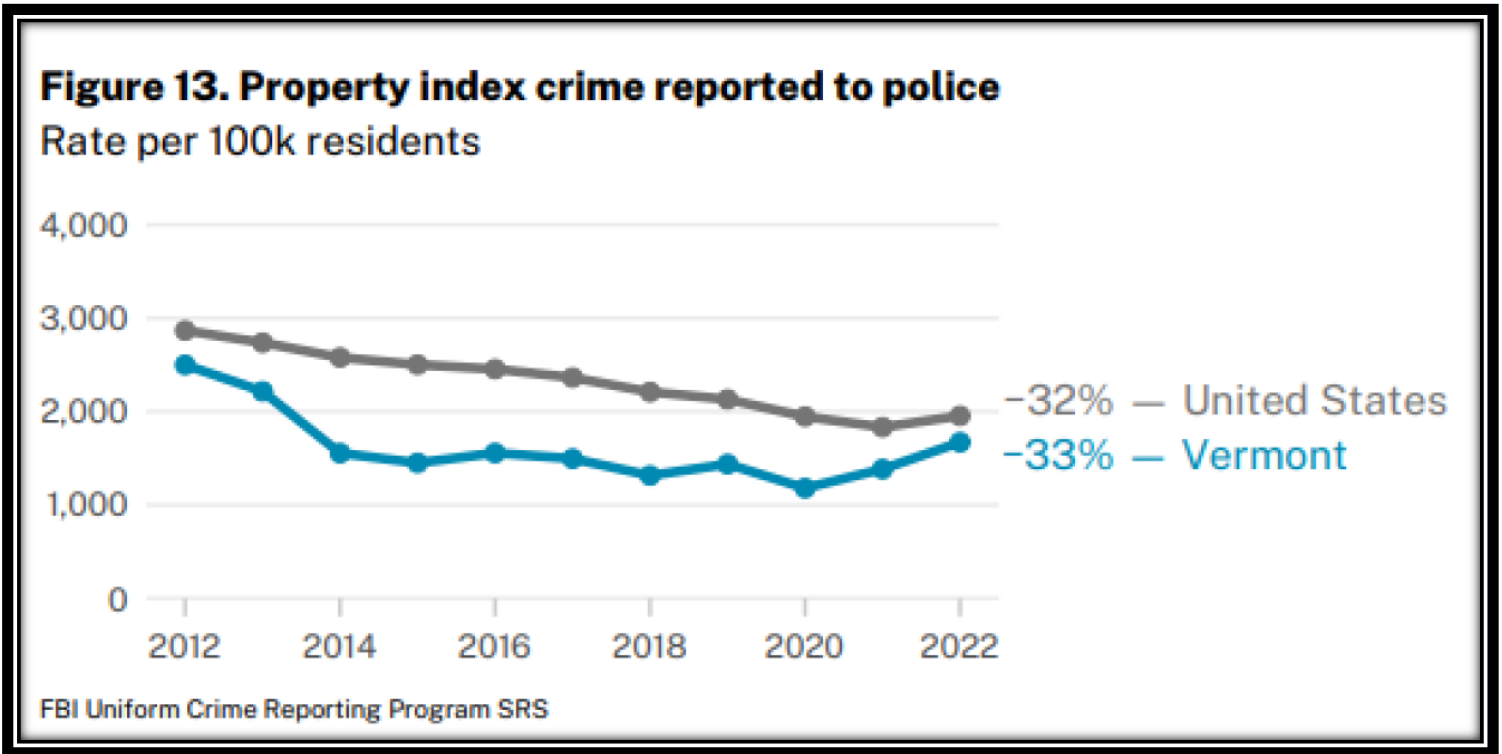
Source. Rep. LaLonde 12/19/2023 Presentation to House Appropriations Committee.



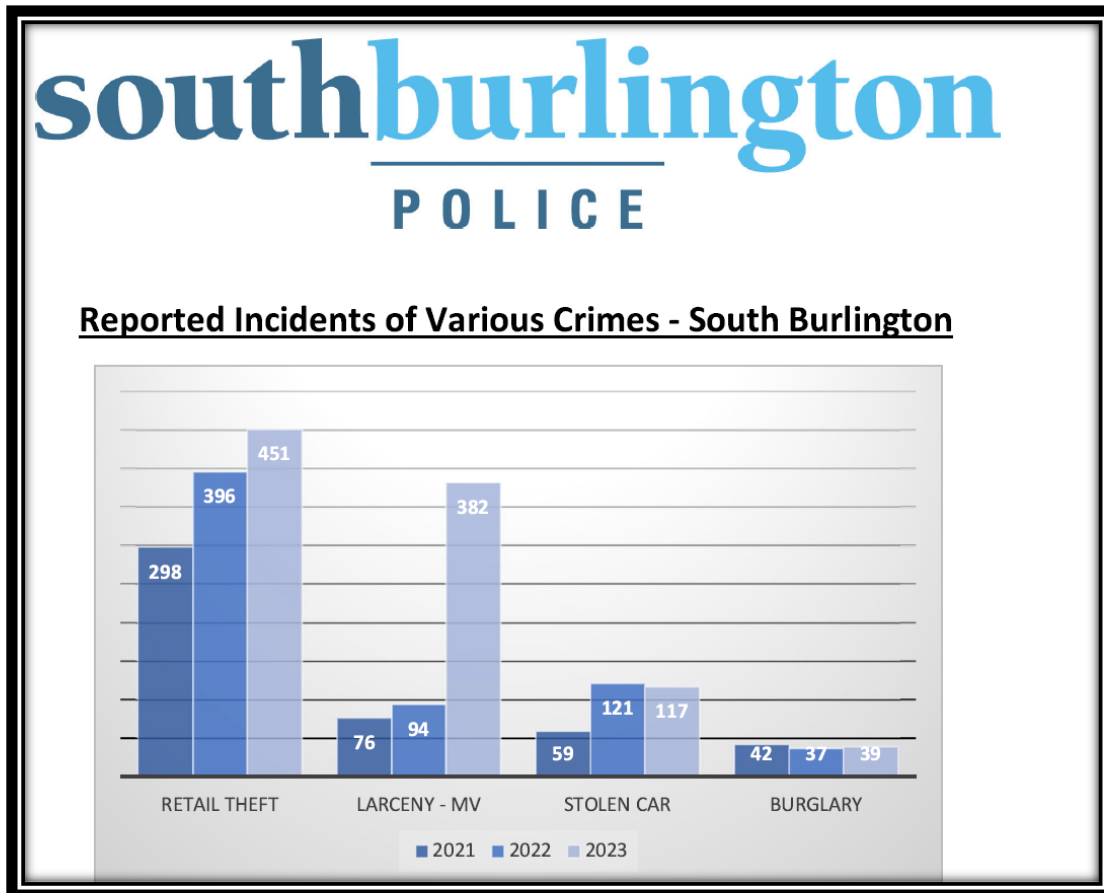
Source. Rep. LaLonde 12/19/2023 Presentation to House Appropriations Committee.



Source. Rep. LaLonde 12/19/2023 Presentation to House Appropriations Committee.



Source. Rep. LaLonde 12/19/2023 Presentation to House Appropriations Committee.



Source. Rep. LaLonde 12/19/2023 Presentation to House Appropriations Committee.

ILLINOIS PRETRIAL FAIRNESS ACT: HIGHLIGHTS CONCERNING DETENTION, ARRESTS WHILE AWAITING TRIAL, AND VCRS⁷

5. Reforms Process for Violations of Pretrial Release Conditions

- a. The Pretrial Fairness Act overhauls the process for violations of pretrial release; this language is found in 725 ILCS 5/110-6. (Pages 358-370.) Under existing Illinois law, even the smallest alleged violations may result in revocation of pretrial release.
- b. Different Approaches for Technical Violations vs. New Arrests: The Pretrial Fairness Act splits violations into two categories:
 - i. "Sanction" violations are all technical violations (for example: failure to report to pretrial services, all missed court dates, and all arrests for class B and below misdemeanors).
 - ii. "Revocation" violations are arrests for Class A misdemeanors and felonies.
- c. "Sanction" violations: For low-level violations, the Pretrial Fairness Act creates a system that allows judges to respond to these violations, but not to indefinitely revoke pretrial release. When one of these violations occurs, the following conditions apply:
 - i. Notice to Appear: A person may be sent a notice to appear and given the opportunity to come into court and avoid being recorded as having failed to appear in court. The court retains the power to issue a warrant immediately;
 - ii. Access to Counsel: The person is guaranteed meaningful access to counsel;
 - iii. Violation must be willful: Once in court, the judge must immediately hold a quick hearing to determine if the violation was (1) willful and (2) not due to a person's financial circumstances.
 - iv. Sanctions: The judge may give a verbal or written warning, or assess up to a \$200 fine or up to 30 days in jail. When this sanction finishes, the person is automatically re-released.
- d. "Revocation" violations: When someone released pretrial on a Class A misdemeanor or any felony is arrested for a second class A misdemeanor or felony, their pretrial release can be revoked using the following procedure:
 - i. Immediate Transfer: After arrest, the person is transferred directly to the judge overseeing their underlying case.
 - ii. Request for Revocation: The prosecutor must request a revocation hearing;
 - iii. Access to Counsel: The person is guaranteed access to counsel;
 - iv. Revocation Hearing: The Revocation hearing carries a lower level of proof than initial detention hearings: prosecutors must prove by clear and convincing evidence that the arrested person is likely to be re-arrested, rather than that they pose a specific danger to someone;

⁷ Source: Coalition to End Money Bond. ("Summary of Pretrial Fairness Act"). [Post-Trailer PFA Summary \(Policy Audience\) - Google Docs](#); [Key Materials - Seven Essential Elements \(pretrialfairness.org\)](#).

- v. If the violation case is dismissed, pretrial release is restored: If pretrial release is revoked and the case that caused the revocation is later dismissed, the person is found not guilty, or the person completes a sentence on that case (such as a time considered served sentence on a misdemeanor), they are automatically released on their underlying case.

iii. Electronic Monitoring: See below section on Electronic Monitoring, for specifics.

- b. Mandates Speedy Transfer to Other Counties: Requires that people with outstanding warrants in other counties who would otherwise be released are transferred within 72 hours for resolution of the warrant. Under existing practice, people may wait weeks for transfer or resolution of outstanding warrants. (Page 331.)

Pretrial Practices Recommendations and the Illinois Constitution.

- e. Detainable Charges for Safety Concerns: A limited number of felonies (and a small number of misdemeanors) will be eligible for detention after a first arrest **if** the state proves that the arrested person poses a specific, real, and present threat to someone else. These charges are:
 - i. All non-probationable, forcible felonies (the most common are murder, attempted murder, armed robbery, home invasion, and vehicular hijacking);
 - ii. All sex crimes (all forms of criminal sexual assault, criminal sexual abuse, child pornography related charges, and various charges relating to sexual misconduct with children and human trafficking);
 - iii. All domestic violence charges (misdemeanor and felony domestic battery and violations of orders of protection); and
 - iv. All non-probationable gun-related felonies (including all forms of discharge of a firearm, sale of firearms, and most forms of possession of a firearm).
- f. Detainable Charges for Willful Flight Concerns: If a prosecutor alleges that a person is highly likely to willfully flee prosecution, they may seek detention of someone charged with any class 3 felony or above. See below for more details on the “willful flight” standard.

4. Raises Standards for Initial Pretrial Detention

- a. Affirms presumption of release for everyone: “It is presumed that a defendant is entitled to release on personal recognizance on the condition that the defendant attend all required court proceedings and the defendant does not commit any criminal offense, and complies with all terms of pretrial release...” (Page 335.)
- b. Defines threat to a person (not “the community”): “Detention only shall be imposed when it is determined that the defendant poses a specific, real and present threat to a person, or has a high likelihood of willful flight.” (Page 336.) Existing Illinois law was less clear on this.
- c. Requires written justification for detention & review: “If, after the procedures set out in Section 110-6.1, the court decides to detain the defendant, the Court must make a written finding as to why less restrictive conditions would not assure safety to the community and assure the defendant's appearance in court. At each subsequent appearance of the defendant before the Court, the judge must find that continued detention or the current set of conditions imposed are necessary...” (Page 337.)
- d. Requires Finding by Clear and Convincing Evidence: Denial of pretrial release must be the result of a finding the state has proven the above through clear and convincing evidence. (Page 375.) This was not the clear standard in Illinois before.
- e. Defines Willful Flight: Like courts around the country, Illinois has long used mere “appearance” in court as the standard for making pretrial decisions and applied conditions and detained people as a result. This fails to account for the many reasons people miss court that are outside of their control, does not distinguish between missing court and actually fleeing, and disadvantages and punishes some of our most vulnerable neighbors, such as people experiencing homelessness. The Pretrial Fairness Act creates a new standard of “willful flight,” refocusing the court on the historical concern of evasion of prosecution. The Pretrial Fairness Act defines willful flight like this: “Willful flight means planning or attempting to intentionally evade prosecution by concealing oneself. Simple

(draft bail amendments bill)
11/29/2023 -

Page 1 of 4

1 Introduced by
2 Referred to Committee on
3 Date:
4 Subject: <Subject>
5 Statement of purpose of bill as introduced: This bill proposes to <Purpose>

6 An act relating to <Title>

7 It is hereby enacted by the General Assembly of the State of Vermont:

8

9 **Sec. 1.**

10 **13 V.S.A. § 7551(b) is amended to read:**

11 (b)(2) In the event that the court finds that imposing bail is necessary to
12 mitigate risk of flight from prosecution for a person charged with a violation of
13 a misdemeanor offense that is eligible for expungement pursuant to
14 subdivision 7601(4)(A) of this title, the court may impose bail in the maximum
15 amount of \$200.00. **The \$200.00 limit shall not apply to an offense committed**
16 **by a defendant who has been released pending trial for another offense.**

17 (3) This subsection shall not be construed to restrict the court's ability to
18 impose conditions on such persons to reasonably mitigate the risk of flight
19 from prosecution or to reasonably protect the public in accordance with section
20 7554 of this title.

1 **Sec. 2**

2 **13 V.S.A. § 7554(a)(1) is amended to read:**

3 ...

4 (1) The defendant shall be ordered released on personal recognizance or
5 upon the execution of an unsecured appearance bond in an amount
6 specified by the judicial officer unless the judicial officer determines
7 that such a release will not reasonably mitigate the risk of flight from
8 prosecution as required. In determining whether the defendant presents
9 a risk of flight from prosecution, the judicial officer shall consider, in
10 addition to any other factors, the seriousness of the offense charged, the
11 number of offenses with which the person is charged, whether, at the
12 time of the current offense or arrest, the person was on probation,
13 parole or other release pending trial, sentencing, appeal or completion
14 of sentence for an offense under federal, state or local law; the person's
15 noncompliance with court orders and failures to appear at court
16 hearings. If the officer determines that the defendant presents a risk of
17 flight from prosecution, the officer shall, either in lieu of or in addition
18 to the methods of release in this section, impose the least restrictive of
19 the following conditions or the least restrictive combination of the
20 following conditions that will reasonably mitigate the risk of flight of
21 the defendant as required:

1 ...

2 (B) Place restrictions on the travel, or association or place of abode of the
3 defendant during the period of release.

4 ...

5 (F) Impose any other condition found reasonably necessary to mitigate the risk
6 of flight from prosecution as required, including a condition requiring that the
7 defendant return to custody after specified hours.

8 ...

9 (2) If the judicial officer determines that the conditions or release imposed
10 to mitigate the risk of flight from prosecution will not reasonably
11 protect the public, the judicial officer may impose in addition the least
12 restrictive of the following conditions or the least restrictive
13 combination of the following conditions that will reasonably ensure the
14 protection of the public:

15 ...

16 **Sec. 3.**

17 **13 V.S.A. § 7576(9) is amended to read:**

18 “Flight from prosecution” means any action or behavior undertaken by a
19 person charged with a criminal offense to avoid court proceedings which shall
20 include noncompliance with court orders and failures to appear at court
21 hearings.

1

2 Sec. X. EFFECTIVE DATE

3 This act shall take effect on August 1, 2024.